

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

NATIONAL TRUST
INSURANCE COMPANY,

Plaintiff, v.

KLEIN CONTRACTING CORP.,
JOSEPH P. TUCCINARDI,
MICHELLE THOMPSON, and
LAURA ROSENCRANTZ,

Defendants.

Civil Action

File No.: 1:21-cv-03730-SDG

STATEMENT OF UNDISPUTED MATERIAL FACTS

COMES NOW National Trust Insurance Company (“NTIC”), Plaintiff in the above-styled matter, by and through its undersigned counsel of record, and hereby files this Statement of Undisputed Material Facts in support of its Motion for Partial Summary Judgment, respectfully showing this Court the following:

1.

NTIC issued a Commercial Auto Insurance Policy, Policy No. CA100003734-05 (the “Auto Policy”), to Defendant Klein Contracting Corporation (“Klein”). [“Auto Policy,” a certified copy of which is attached to NTIC’s Motion for Partial Summary Judgment as **Exhibit B**].

2.

The Auto Policy contained Business Auto Coverage that was effective from July 1, 2020 through July 1, 2021. [**Exhibit B**, Preface].

3.

Endorsement 002 listed the Schedule of Covered Autos under the Auto Policy, listing a 2020 Ford F150, and was also effective July 1, 2020 to July 1, 2021. [**Exhibit B**, Endorsement 002].

4.

NTIC issued a Commercial Umbrella Policy, Policy No. UMB100015111-04, to Klein (the “Umbrella Policy”). [“Umbrella Policy” – a certified copy of which is attached to NTIC’s Motion for Partial Summary Judgment as **Exhibit C**].

5.

The Umbrella Policy’s Liability Coverage was effective from July 1, 2020 through July 1, 2021. [**Exhibit C**, Preface].

6.

The Auto Policy is scheduled as underlying commercial automobile liability insurance for the Umbrella Policy (the Auto Policy and Umbrella Policy collectively referred to as the “NTIC Policies”). [**Exhibit B**, **Exhibit C**].

7.

The Named Insured on both NTIC Policies is Klein. [Id.].

8.

The permissive use clauses within the NTIC Policies define “insured” as the named insured and “[a]nyone else while using with your permission a covered ‘auto.’” [**Exhibit B**, *CA 00 01 10 13*, Section II.A.1; [**Exhibit C**, *CU 00 01 04 13*, Section II.2.b.].

9.

Both NTIC Policies explain that use of the words “you” and “your” throughout the policies “refer to the Named Insured shown in the Declarations.” [**Exhibit B**, *CA 00 01 10 13*, Preface; **Exhibit C**, *CU 00 01 04 13*, Preface].

10.

Klein hired Defendant Joseph P. Tuccinardi (“Tuccinardi”) in June of 2020. [Deposition of Candace Klein, taken May 12, 2021, true and correct excerpts of which are attached to Plaintiff’s Motion for Partial Summary Judgment as **Exhibit D**, referenced hereinafter as “Klein Depo,” 16:22 - 17:1].

11.

Tuccinardi’s position with Klein allowed him access to the 2020 Ford F150, covered under the NTIC Policies. [Klein Depo, 18:23 - 19:6].

12.

As part of Tuccinardi's hiring process with Klein, Tuccinardi was given a copy of the company's Fleet Safety Policy. [Klein Depo, 32:15 - 23].

13.

Through their Fleet Safety Policy, Klein allows employees, in very limited circumstances, to use their fleet vehicles for personal use. [Klein Depo, 32:15 - 23].

14.

The Fleet Safety Policy explains that Klein "[v]ehicles are provided primarily for use on organization business. However, certain reasonable use is permitted provided that prior approval from the Company President or CEO is obtained. In addition, . . . Drivers must comply with all applicable state laws and regulations." [Id.].

15.

On or about August 1, 2020, Tuccinardi, while allegedly intoxicated, drove the 2020 Ford F150 and struck a vehicle driven by Defendant Michelle Thompson (the "Collision"). [Second Amended Complaint [Doc. 37] ¶ 10; Defendants Thompson and Rosencrantz's Answer [Doc. 43] ¶ 10; Defendants Klein Contracting and Tuccinardi's Default [Doc. 47]].

16.

On the date of the Collision, Tuccinardi was on his way back from a Saturday afternoon golf trip when he subsequently stopped to get dinner, and while leaving dinner, got into the Collision with Mrs. Thompson. [Klein Depo 54:4 - 19].

17.

After the Collision, Klein terminated Tuccinardi's employment on August 25, 2020. [Second Amended Complaint [Doc. 37] ¶ 42; Defendants Klein Contracting and Tuccinardi's Default [Doc. 47]].

18.

When Tuccinardi's employment was terminated with Klein, he also immediately lost status as an "insured" under the NTIC Policies issued to Klein. [**Exhibit B**, CA 00 01 10 13, Section 11.A.; **Exhibit C**, CU 00 01 04 13, Section II.2.b.].

19.

After the Collision, Thompson and her wife, Defendant Laura Rosencrantz ("Rosencrantz"), filed a personal injury action in the State Court of DeKalb County, Georgia against Tuccinardi, and his employer at the time, Klein. The suit was styled: *Michelle Thompson and Laura Rosencrantz v. Klein Contracting Corp. and Joseph P. Tuccinardi*, Civil Action File No. 20A83659. (the "Underlying Complaint"). [A

true and correct copy of which is attached to NTIC's Motion for Partial Summary Judgment as **Exhibit A**].

20.

As part of the Underlying Complaint, Thompson and Rosencrantz seek punitive damages against Tuccinardi and plan to use Tuccinardi's subsequent actions as evidence for their award. [Defendant Michelle Thompson's Responses to Plaintiff NTIC's Interrogatories – true and correct copies of which are attached to NTIC's Motion for Partial Summary Judgment as **Exhibit E**].

21.

Klein was subsequently dismissed from the Underlying Complaint, presumably because Tuccinardi was clearly not in the course and scope of his employment at the time of the Collision. [Second Amended Complaint [Doc. 37] ¶ 11; Defendants Thompson and Rosencrantz's Answer [Doc. 43] ¶ 11; Defendants Klein Contracting and Tuccinardi's Default [Doc. 47]].

22.

After Thompson and Rosencrantz filed the Underlying Complaint, NTIC filed the present Declaratory Judgment action on September 9, 2021 [Doc. 1] and filed its Second Amended Complaint for Declaratory Judgment on May 12, 2022. [Doc. 37].

23.

Through its Second Amended Complaint for Declaratory Judgment, NTIC sought a declaration that it owes no duty to defend or indemnify Tuccinardi for the allegations in the Underlying Complaint because he does not qualify as an “insured” under the NTIC Policies issued to Klein, given he did not have permission to drive Klein’s Ford F150 at the time of the Collision. [Id.].

24.

NTIC also sought a declaration that it owes no duty to defend or indemnify Tuccinardi for any allegations of punitive damages in the Underlying Complaint because Thompson and Rosencrantz seek these damages from incidents that occurred after Tuccinardi’s employment was terminated with Klein—when Tuccinardi was not an insured under the NTIC Policies issued to Klein. [Id.].

25.

Thompson and Rosencrantz filed their Answer to NTIC’s Second Amended Complaint for Declaratory Judgment on May 24, 2022. [Doc. 43].

26.

Klein was served with NTIC’s Second Amended Complaint for Declaratory Judgment on May 19, 2022. [Doc. 42].

27.

Tuccinardi was served with NTIC's Second Amended Complaint for Declaratory Judgment on May 26, 2022. [Doc. 45].

28.

Neither Klein nor Tuccinardi filed an Answer, and so NTIC subsequently filed its Motion for Default as to both on July 17, 2022. [Doc. 47].

WHEREFORE, Plaintiff NTIC prays this Court will GRANT its Motion for Partial Summary Judgment.

This 31st day of August, 2022.

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CERTIFICATE OF SERVICE

This is to certify that I electronically filed this **Statement of Undisputed Material Facts** using the CM/ECF system which will automatically notify:

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This 31st day of August, 2022.

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